



**MILPITAS CITY COUNCIL MEETING AGENDA
AUGUST 1, 2006**

**6:00 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)
455 E. CALAVERAS BOULEVARD**

SUMMARY OF CONTENTS

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

1) CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Pursuant to California Government Code §54956.9(a))

- City of Milpitas v. Turner Construction et al., Santa Clara County Superior Court Case No. 103CV815946 Consolidated with Case No. 103CV008400
- Redevelopment Agency of the City of Milpitas v. Winsor et al. Santa Clara County Superior Court Case Nos. 105CV043954 and 105CV043966

2) CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING

(Pursuant to California Government Code §54957.6)

City Negotiator: Carmen Valdez, Art Hartinger. Employee Organizations: Laborers' International Union of North America (LIUNA) and International Association of Fire Fighters (IAFF)

Under Negotiation: Wages, Hours, Benefits, and Working Conditions

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code §54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. INVOCATION (Councilmember Polanski)

VI. APPROVAL OF MINUTES (June 20, 2006)

VII. SCHEDULE OF MEETINGS

VIII. PRESENTATIONS

Certificates of Appreciation

Citizens Emergency Preparedness Advisory Commission (CEPAC) Commissioners' Service and Recognition to Annell Spencer and Donna Wynne

Commission Reappointment Certificate

Surdev Dave Sandhu - Parks, Recreation, and Cultural Resources Commission

IX. PUBLIC FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

- X. ANNOUNCEMENTS**
- XI. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- XII. APPROVAL OF AGENDA**
- XIII. CONSENT CALENDAR (Items with Asterisks)**
- XIV. PUBLIC HEARINGS**
 - 1. Approve a New Solid Waste Rate Adding a Pilot Commercial Food Waste Program (Staff Contact: Marilyn Nickel, 586-3347)**
 - 2. Adopt Resolution Confirming Assessments; Weed Abatement Report And Assessment List (Staff Contact: Patricia Joki, 586-3370)**
- XV. UNFINISHED BUSINESS**
 - * 3. Odor Control Comprehensive Action Plan Update (Staff Contact: Marilyn Nickel, 586-3345)**
- XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**
 - RA1. Call to Order by the Mayor/Chair**
 - RA2. Roll Call**
 - RA3. Approval of Minutes (June 20, 2006)**
 - RA4. Approval of Agenda and Consent Calendar**
 - RA5. Receive Progress Report on Library, Midtown East Parking Garage, and Related Projects, and Take Associated Actions, Projects No. 8162, 8161, 8153, and 8165 (Staff Contact: Mark Rogge, 586-3403)**
 - RA6. Approval of the 2005 - 2010 Redevelopment Implementation Plan (Staff Contact: Diana Whitecar, 586-3059)**
 - RA7. Approval of Preliminary Report for the proposed merger of Project Area No. 1 and the Great Mall Redevelopment Project Area, Approval of Proposed Plan Amendments, Authorization to Transmit Plan Amendments to the Planning Commission and to Transmit the Preliminary Report and Proposed Plan Amendments to Affected Taxing Entities; Adopt a Resolution Finding that Formation of a Project Area Committee is Not Required. (Staff Contact: Diana Whitecar, 586-3059)**
 - RA8. Authorize the City Manager to Execute a Consulting Services Agreement with Noll & Tam Architects, Milpitas Senior Center, Project No. 8176 (Staff Contact: Greg Armendariz, 586-3317)**
 - *RA9. Adopt a Resolution for an Exclusive Negotiating Rights Agreement Between the Redevelopment Agency of the City of Milpitas and Piercey Automotive Group for the Development of a Multi-Story Class A Office Tower at the Intersection of Tasman Avenue and I-880 (Staff Contact: Diana Whitecar, 586-3059)**
 - *RA10. Adopt Two Resolutions Approving the Annual Investment Policy (Staff Contact: Emma Karlen, 586-3145)**

- *RA11. City of Milpitas Investment Portfolio Status Report for the Quarter Ended June 30, 2006 (Staff Contact: Emma Karlen, 586-3145)
- *RA12. Approve Authorization to Enter into Negotiations with Global Premier Development, Inc. for Affordable Housing Units (Staff Contact: Felix Reliford, 586-3071)
- *RA13. Approve Amendment No. 1 to the Agreement with Consolidated Engineering Laboratories, Midtown East Parking Garage, Project No. 8161 (Staff Contact: Steve Erickson, 586-3414)
- *RA14. Approve Contract Change Order for North Main Utilities Project-Weller Lane to Carlo Street, Underground Utility District No. 5, Project No. 8153 (Staff Contact: Steve Erickson, 586-3414)
- RA15. Agency Adjournment

XVII. REPORTS OF OFFICERS, COMMISSIONS, AND COMMITTEES

City Council

- * 4. Approve Mayor's Recommendations for Appointments to City Commissions (Contact: Mayor Esteves, 586-3029)

Arts Commission

- * 5. Approve Eight Cultural Arts Support Program Applications for the 2006-07 Funding Cycle (Staff Contact: Renee Lorentzen, 586-3286)

Citizens Emergency Preparedness Advisory Commission

- 6. Request Direction from Council on Citizens Emergency Preparedness Advisory Commission Recommendation for a New Ordinance Requiring Automatic Gas Shut-Offs on Residences (Contacts: Councilmember Polanski, 586-3024; Patricia Joki, 586-3370; Keyvan Irannejad, 586-3244)

Finance and Library Subcommittees, Library Advisory Commission

- 7. Receive Library Governance Study and Confirm the City's Current Membership in the Santa Clara County Library System and Joint Powers Authority (Staff Contact: Cindy Maxwell, 586-3287)

XVIII. NEW BUSINESS

- * 8. Request for Waiver of Fees for South Bay School of Music Arts Rental of City's Mobile Stage at Chamber of Commerce's "Celebrate Milpitas" Festival (Staff Contact: Kathleen Yurchak, 586-3209)
- * 9. Authorize the Purchasing Agent to Dispose of Two Surplus Vehicles (Staff Contact: Chris Schroeder, 586-3161)

XIX. ORDINANCES

- 10. Waive First Reading Beyond Title and Introduce Ordinance No. 262.3 Regarding Open Government (Contacts: Vice Mayor Gomez, 586-3031, Councilmember Livengood, 586-3027)
- 11. Waive First Reading Beyond Title and Introduce Ordinance No. 101.19 and Resolution of Intention to Approve an Amendment to the Contract Between the Board of Administration California Public Employees' Retirement System and the City Council of the City of Milpitas (Staff Contact: Carmen Valdez, 586-3086)

- * 12. Waive Second Reading and Adopt Ordinance No. 38.768 for Zone Change No. ZC2004-1 for a Five Lot Subdivision from Agriculture to Single-Family Residential (R1-6), Located at 2015 Calaveras Road, APN 088-16-041 (Staff Contact: Kim Duncan, 586-3283)

XX. RESOLUTIONS

- * 13. Adopt Resolution Regarding Policy for the Provision of Wastewater Collection, Treatment and Disposal Services to Residential Units with Affordable Housing Components (Staff Contacts: Steve Mattas, 586-3040 and Greg Armendariz, 586-3317)
- * 14. Adopt Resolution Regarding June 6, 2006 Final Election Results (Staff Contact: Mary Lavelle, 586-3001)
- * 15. Adopt Resolution Certifying and Annexing Tract 9690 to Community Facilities District No. 2005-1, Apton Properties, Project No. 3144 (Staff Contact: Mehdi Khaila, 586-3328)
- * 16. Adopt Resolution Requesting the Allocation of Grant Funding from the MTC – TLC Capital Grant Program for the Midtown Transportation and Streetscape Improvements Phase I: North Main Street from Weller Lane to Carlo Street project (Staff Contact: Jaime Rodriguez, 586-3335)
- * 17. Adopt Resolution Approving Disadvantaged Business Enterprise (DBE) Race-Neutral Implementation Agreement for Federally Funded City Transportation Projects (Staff Contact: Mark Rogge, 586-3403)
- * 18. Adopt Resolution Granting Final Acceptance Water System Air Relief Valve Modifications, Phase I, Project No. 7086 (Staff Contact: Andrew Brozyna, 586- 3315)

XXI. BIDS AND CONTRACTS

- 19. Authorize City Manager to Execute Contract for Disaster Preparedness Services (Staff Contact: Clare Frank, 586-2811)
- * 20. Award the Bid for the Public Access Studio to Ranis Construction, Inc. (Staff Contact: Chris Schroeder, 586-3161)
- * 21. Approve Budget Appropriation for Abel Street Midtown Improvements, Project No. 8157 (Staff Contact: Greg Armendariz, 586-3317)
- * 22. Approve Budget Appropriation: S. Park Victoria Drive Pavement Rehabilitation, Project No. 4225 (Staff Contact: Doug De Vries, 586-3313)
- * 23. Authorize Payment to Surety Company for Hall Park Walkway Improvements, Project No. 5058 (Staff Contact: Greg Armendariz, 586-3317)
- * 24. Authorize the City Engineer to Execute a Contract Change Order for 2006 Slurry Seal, Project No. 4229 and Main/Montague Traffic Signal Modification, Project No. 4231 (Staff Contact: Doug De Vries, 586-3313)
- * 25. Award Construction Contract: Sewer Deficiency and Structural Correction Program – Open Cut, Project No. 6073 (Staff Contact: Greg Armendariz, 586-3317)
- * 26. Approve Budget Transfer and Purchase Orders for General Legal, Public Works Litigation, and Personnel Services Expenses Provided by Meyers Nave for FY 2006-07 (Staff Contact: Steven Mattas, 586-3040)

- * 27. **Approve Renewal of Annual Software Support and Maintenance Fees with Cayenta for the Financial System through June 30, 2007 (Staff Contact: Terry Medina, 586-2703)**
- * 28. **Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals for Main/Montague Traffic Signal Modification, Project No. 4231 (Staff Contact: Doug De Vries, 586-3313)**

XXII. CLAIMS AND DEMANDS

- * 29. **Approve Payment Requests to Two Vendors (Staff Contact: Chris Schroeder, 586-3161)**

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, AUGUST 15, 2006 AT 7:00 P.M.**

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public.

Commissions, boards, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION

at the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035

E-mail: rpioroda@ci.milpitas.ca.gov / Fax: 408-586-3030 / Phone: 408-586-3040

A free copy of the Open Government Ordinance is available from the City Clerk's Office or by visiting the City's website www.ci.milpitas.ca.gov, select Open Government Ordinance under News Features.

APPLY TO SERVE ON A CITY COMMISSION!

Currently, there are openings on the following Commissions:

Arts Commission

Community Advisory Commission

Economic Development Commission (Hotel Rep)

Mobile Home Park Rental Review Board

Planning Commission (alternate)

Applications are available online at www.ci.milpitas.ca.gov or outside the City Council Chambers.

Contact the City Clerk's Office (586-3003) for information.

AGENDA REPORTS

XIV. PUBLIC HEARINGS

- 1. Approve a New Solid Waste Rate Adding a Pilot Commercial Food Waste Program (Staff Contact: Marilyn Nickel, 586-3347)**

Background: Allied Waste Services (Allied) provides waste disposal services, including collection and processing services for the City's solid waste and recycling needs, and residential yard trimmings as specified in agreements with the City. Upon customer request, the City and Allied wish to expand services to include a pilot commercial food waste program. The program will collect food scraps from the customer's site and recycle it into compost material. It will be limited to one participant. A new solid waste rate must be established to add the pilot program to the existing solid waste collection rate and is shown below.

Allied Waste Services of Santa Clara County

Milpitas Commercial Food Waste Rates

Bin Rental (1)	Times/Week	1-cubic yard (CY)	1.5-CY	2-CY	3-CY
\$13.60 – 1 cy	1 x week	\$105.20	\$141.26	\$177.34	\$258.48
\$13.60 – 1.5 cy	2 x week	\$193.98	\$273.37	\$346.39	\$510.77
\$13.60 – 2 cy	3 x week	\$273.48	\$378.27	\$502.79	\$745.33
\$18.11 – 3cy	4 x week	\$346.39	\$493.18	\$659.11	\$979.89
	5 x week	\$424.58	\$608.05	\$815.48	\$1214.44
	6 x week	\$502.79	\$722.90	\$971.90	\$1448.98
	Extra Pickup	\$62.60	\$73.24	\$86.33	\$110.05

Recommendation:

1. Close the Public Hearing.
 2. Adopt Resolution for the new solid waste rate, adding the food waste pilot program.
- 2. Adopt Resolution Confirming Assessments; Weed Abatement Report and Assessment List (Staff Contact: Patricia Joki, 586-3370)**

Background: In accordance with Chapter 202, Weed Abatement, of the Milpitas Municipal Code, the County Department of Agriculture and Resource Management Office of the Fire Marshal has filed with the City Clerk a report and assessment list on weeds abated within the City. The report has been posted and a notice of tonight's hearing posted and published.

The City's ordinance provides that the City Council "shall hear the report together with any objections of the property owner liable to be assessed.... and make such modifications on the proposed assessments as it deems necessary..." After confirmation by Council resolution, the resolution will be recorded and charges thereon become a lien on the land involved to be collected in the same manner as property taxes. A copy of the assessment list and the proposed resolution are included in the Council's agenda packet.

Recommendation:

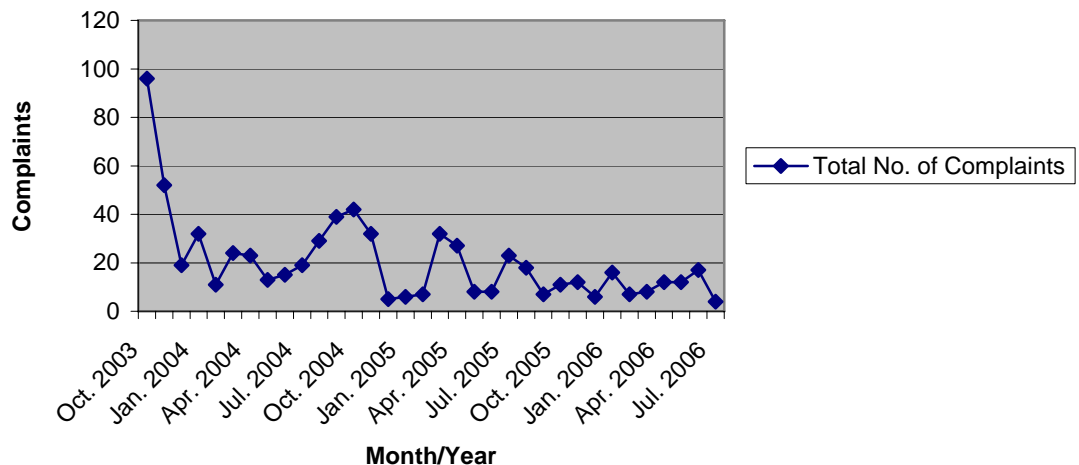
1. Close the public hearing.
2. Adopt Resolution confirming the assessments.

XV. UNFINISHED BUSINESS

- * 3. **Odor Control Comprehensive Action Plan Update (Staff Contact: Marilyn Nickel, 586-3345)**

Background: The Bay Area Air Quality Management District (BAAQMD) Rapid Notification system continues to e-mail real-time odor complaint advisories to potential odor sources and City staff. Complaints have remained low as shown in the graph below.

October 2003 - July 26, 2006 Odor Complaint Summary



Recommendation: Receive the progress report from staff.

XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

- RA1. Call to Order by the Mayor/Chair**
- RA2. Roll Call**
- RA3. Approval of Minutes (June 20, 2006)**
- RA4. Approval of Agenda and Consent Calendar**
- RA5. Receive Progress Report on Library, Midtown East Parking Garage, and Related Projects, and Take Associated Actions, Projects No. 8162, 8161, 8153, and 8165 (Staff Contact: Mark Rogge, 586-3403)**

Background: The Library Subcommittee met on June 27 and heard a progress report on the Library Parking Garage and related projects. The Library architect, Group 4 Architecture, has prepared and submitted the 95% construction documents for Building Permit review. Bids were received for the East Parking Garage on July 25. North Main Street utilities and site preparation work is also in progress. Staff will provide a brief presentation on the progress of these projects.

Library

The cost estimate for the library, based upon the 95% construction documents, was done by the Architect, Group 4, and independently by Critical Solutions Inc. The reconciled costs are within the Cost Plan. A notice inviting pre-qualifications statements from prospective prime contractors wishing to bid on the library project was issued and advertised on July 27. Pre-qualifications statements will be due in August. Plan review comments are due from the Building Department by August 16. Plans are scheduled to be issued for bids on October 24.

Garage

On June 6 the City Council/RDA Board pre-qualified five prime contractors for the East Parking Garage Project. Plans and specifications were advertised, and issued for monetary bids on June 19. On July 25 sealed bids were received from the following prime contractors who were on the approved bidders list (Engineer's Estimate plus 10% bid contingency):

<u>Bidder</u>	<u>Base Bid</u>
Cost Plan	\$9,200,000
Devcon Construction	\$9,008,119
West Bay Contractors	\$9,840,000
Nibbi Brothers Construction	\$11,600,266

Two other pre-qualified contractors informed the City that they were too busy on recently awarded projects to bid on this project. The lowest responsible bid for the construction contract for parking garage from Devcon Construction, Inc in the amount of \$9,008,119 which is 7% above the Engineer's Estimate, but less than the Cost Plan which included a 10% bid contingency. The bid contingency in the Cost Plan recognizes that when there are few bidders, due to an extremely busy construction market, bid amounts tend to rise.

There are sufficient funds available in the project budget (which includes an \$800,000 construction contingency) to award the construction contract. Staff recommends that the Council confirm the lowest responsive bid and award the construction contract to Devcon Construction, Inc. of Milpitas.

An alternate was also bid to use driven piles instead of auger-cast piles, in case the bid prices exceeded the Cost Plan. The costs of driven piles and auger cast piles have fluctuated due to the economics of competition presented with alternative deep foundation methods. The alternate to use driven piles would decrease the price by \$264,585, or approximately 3%. This cost is offset by higher costs of special inspection, higher liabilities and disruption to the neighborhood, and lower potential for savings after the test piles are complete. The noise and ground shaking of driven piles would be disruptive to neighboring residential and commercial users as well as having a greater potential to damage nearby buildings. Since the garage area has residual petroleum contamination, there would be an additional unknown cost of disposal of spoils from pre-drilled holes for driven piles. Therefore, staff is not recommending the alternate foundation method.

Construction Change Order Policy for North Main Street Development

For the large construction projects within the North Main Street Development area staff is requesting an expansion of the existing change order policy to allow timely completion of these projects, while addressing the need to respond swiftly to construction conditions in order to limit potential claims or risk to the City. Staff will report on time-critical change orders after execution at the next monthly progress report to the Library Subcommittee and to the City Council. Change order authority would not exceed the amounts established in the Cost Plan for each project, or do not require additional appropriation. The North Main Street Development projects include the following Capital Improvement Projects: Library Project No. 8162; Midtown East Garage Project No. 8161; North Main Street Utilities, Project No. 8153; and N. Main Street Streetscape, Project No. 8165.

Recommendation:

1. Award Construction Contract for the Midtown East Garage, Project No. 8161, to the lowest responsive bidder, Devcon Construction, Inc., in the amount of \$9,008,119.
2. Authorize staff to execute time-critical change orders for the North Main Street Development Projects, provided that the change orders do not exceed the amounts established in the Cost Plan for each project or do not require additional appropriation.
3. Receive the progress report on the Library and Midtown East Parking Garage.

RA6. Approval of the 2005 - 2010 Redevelopment Implementation Plan (Staff Contact: Diana Whitecar, 586-3059)

Background: The proposed 2005 - 2010 Redevelopment Implementation Plan (Exhibit A), required by California Community Redevelopment Law (CRL), sets goals and objectives that will guide efforts to eliminate blight over the next five years, estimates the revenues and expenditures anticipated by the Agency in the five year period, provides an affordable housing section and an overview of accomplishments of the previous five year period.

Staff made an initial presentation on the proposed Implementation Plan at the March 7th meeting that was more fully discussed by the Agency at its May 16, 2006 meeting. The public hearing is scheduled for the August 1st meeting so that public noticing requirements could be met. The hearing was publicized in the Milpitas Post for three consecutive weeks (July 6, 13 and 20) and posted at four locations in the two project areas - the Milpitas Library, the Milpitas Community Center, the Senior Center and the Milpitas Police Office at the Great Mall.

The only change in the proposed Implementation Plan is the inclusion of activities within the Great Mall Project Area. Over the last five years, the Great Mall has undergone ownership changes resulting in an improved tenant mix and physical improvements to the Center. In the north section of the project area, vacant parcels were redeveloped into housing projects - Park West and Parc Place - that have contributed significantly to the local affordable housing stock. In the southern part of the project area, one hotel, Marriott Courtyard, opened during the five year period.

Over the next five years, Great Mall Project Area projects include improvements to the existing free-standing highway signs and reconfiguration of space to provide for larger tenants.

The proposed Implementation Plan was reviewed with the Economic Development Commission earlier this year. The Plan will be kept on file for public access and will be updated in FY 2007-08, as CRL requires that a mid-cycle public hearing be held in order to better evaluate the success of the local redevelopment program.

Recommendation: That the Redevelopment Agency approve the 2005-2010 Five Year Redevelopment Implementation Plan.

RA7. Approval of Preliminary Report for the proposed merger of Project Area No. 1 and the Great Mall Redevelopment Project Area, Approval of Proposed Plan Amendments, Authorization to Transmit Plan Amendments to the Planning Commission and to Transmit the Preliminary Report and Proposed Plan Amendments to Affected Taxing Entities; Adopt a Resolution Finding that Formation of a Project Area Committee is Not Required. (Staff Contact: Diana Whitecar, 586-3059)

Background: Milpitas has two redevelopment project areas: Project Area No. 1, comprised of 2,230 acres, and the Great Mall Project Area, comprised of 150 acres. (See Exhibit A). Both redevelopment project areas have been amended several times, although Project Area No. 1 is the more active of the two redevelopment areas. In 2003, Project Area No. 1 was amended to increase the size of the project area, extend the plan time limits and increase the project area debt limit. This allowed the Milpitas Redevelopment Agency (Agency) to issue a \$200 million tax allocation bond to finance its current redevelopment program.

The Great Mall Project Area was amended in 2001 to add two non-contiguous parcels that would allow the continued use of freestanding highway signs for the Great Mall Shopping Center. Tax increment is not collected from the Great Mall Project Area and the proposed plan amendment would not change this status.

Staff recommends adoption of amendments to the redevelopment plans for the two project areas in order to effectuate a merger of the project areas. The merger would enable the installation of signage along the freeway and highway corridors within the Project Areas to comply with the California Outdoor Advertising Act (see Item II). The merger of the Project Areas would not add territory to the project areas and would not alter the time or financial limits of the plans.

The complete Preliminary Report for the proposed redevelopment plan amendment is attached as Exhibit B and is summarized below:

I. Preliminary Report Purpose

The proposed redevelopment plan amendments will allow for new freestanding highway signs that can provide advertising for businesses located within the Project Areas. The proposed amendments will merge the two project areas to create an opportunity for businesses within the both project areas to advertise on the two existing freestanding highway signs and new freestanding highway signs in accordance with the California Outdoor Advertising Act. In order to finance their installation and maintenance of the signs, a sign district will need to be created to establish standards for use by participating businesses. It is anticipated that a sign district will also provide “way finder” signs on surface streets to aid customers and clients once they exit the freeways. The signs will also provide opportunities for the advertisement of civic events and public information.

In addition to creating expanded advertising opportunities for the Project Area No. 1 businesses, the merger will allow for the use of Project Area No. 1 redevelopment funds in the Great Mall Project Area.

II. Reasons for Amending the Redevelopment Plans

In order for businesses within both Project Areas to benefit from the existing and new freeway signs, the project areas must be merged. The California Outdoor Advertising Act provides that advertisement displays along freeway corridors may only advertise businesses located on the premises where the sign is located, but provides that businesses within a redevelopment project area may be considered to be on the premises if the project area land is contiguous or is separated only by a public highway. The land for the future highway signs in Project Area No. 1 is contiguous. The existing Great Mall highway signs are non-contiguous, but separated only by I-680 and I-880. Thus, by merging the project areas, businesses located anywhere with either Project Area will be permitted to advertise on signs located along the freeway corridors.

As noted before, implementation of the sign program requires the creation of a sign business district that will be responsible for financing the installation and maintenance of the signs and any “way finder” signs that may also be installed. Agency staff will work with the business community to create this district.

III. Proposed Projects and Programs

Future Agency projects and programs have been clearly defined for the next five years as part of the 2005 – 2010 Implementation Plan. The proposed plan amendment requires an analysis of projected revenue and expenditures over the duration of the redevelopment plans. Working with Agency staff, Keyser Marston Associates allocated projected revenues based on the Capital Project categories identified in the 2005 – 2010 Implementation Plan: Transportation and Public Infrastructure, Community Facilities, Commercial Rehabilitation/Economic Stimulation and Affordable Housing. Using this formula, the expected expenditures are noted below:

• Transportation and Public Infrastructure	\$114,000,000
• Community Facilities Improvements	\$234,000,000
• Commercial Rehab/Economic Stimulation	\$ 87,000,000
• Affordable Housing	<u>\$326,000,000</u>

IV. Financing and Economic Feasibility

This section of the report addresses projected project costs and anticipated revenues and is summarized below. Staff is working with Piercey Toyota as Piercey has offered to finance the cost of sign design and construction. Staff will continue to work with other Project Area businesses toward the establishment of a financing district that will fund on-going maintenance.

A. Revenues

Potential Agency revenue sources to fund project costs, as assumed in the economic feasibility cash flow, include, but are not limited to tax increment revenues generated by Project Area No. 1, proceeds for bonds, interest earnings and the initial Agency FY 2005-06 fund balance. The estimate resources available are summarized below:

Net Tax Increment & Housing Set Aside	\$1,352,000,000
Net Bond Proceeds	\$92,000,000
Interest Earnings	\$19,000,000
Initial Fund Balance	\$82,000,000
Total Aggregate Resources	\$1,545,000,000

B. Expenditures

The Agency has existing bond service, Land Purchase and Operating expenses. Projected over the life of the proposed merged project area, these expenses, coupled with the 20% Housing Set Aside, allows for \$435,000,000 for future redevelopment projects and activities. This includes the five years covered by the 2005-2010 Implementation Plan.

Total project costs are outlined below:

Bond Debt Service	\$483,000,000
Existing Land Purchase Obligations	\$200,000,000
Operation Expenses	\$101,000,000
Subtotal Non-Discretionary	\$784,000,000
Housing Set Aside	\$326,000,000
Transportation & Public Improvements	\$114,000,000
Economic Stimulation	\$ 87,000,000
Community Facilities	\$234,000,000
Subtotal Projects & Programs	\$761,000,000
TOTAL PROJECT COSTS	\$1,545,000,000

Related Amendments and Agency Actions

1. No Project Area Committee Resolution

Staff recommends adoption of the Resolution which finds that a Project Area Committee (PAC) is not required in connection with the merger because the proposed amendments do not affect the Agency's or the City's authority to use eminent domain, do not propose public projects that will cause displacement of a substantial number of low- and moderate-income households, and do not add territory to the project areas.

Staff requests that the City Council direct staff and plan amendment consultants to meet with residents, civic and business organizations, as appropriate, to discuss the proposed amendments and to receive public comment from residents and members of those organizations. This

community meeting would be held in mid-October, prior to the Council/Agency Public Hearing on the proposed merger in early November.

2. SB 1096 Amendments

In addition to the proposed redevelopment plan amendment to merge the two project areas, staff will present separate plan amendments for Project Area No. 1 and the Great Mall Project Area on August 15, 2006. The purpose of these proposed amendments is to extend the life of the two project areas, with the exception of the area added in 2003, as permitted by SB 1096. This 2004 legislation allows each Agency that made Educational Revenue Augmentation Fund (ERAF) payments in Fiscal Years 2004-05 and 2005-06 to extend the life of project areas by the number of years the payments were made, or the case of the Milpitas Agency for two additional years. SB 1096 specifically limits the time extensions to those project areas that have less than 20 remaining years of effectiveness; thus, it does not apply to the Project Area No. 1 Midtown added area.

For the purposes of the Preliminary Report, the SB 1096 plan extensions are included, as the adoption would occur prior to the Council/Agency public hearing on the proposed merger amendment in early November.

Next Steps:

If the Agency approves the Preliminary Report and the proposed Plan Amendments, staff will transmit the proposed Plan Amendments to the Planning Commission for their review as to consistency with the General Plan, and will transmit the Preliminary Report and the proposed Plan amendments to the affected taxing entities. These entities include the County of Santa Clara, the Milpitas Unified School District, the Santa Clara County Office of Education, the Santa Clara County Library District, the Eastside Union High School District, the San Jose – Evergreen Community College District, the Santa Clara Valley Water District, the Bay Area Air Quality Management District and the Berryessa Unified School District.

Agency staff and consultants will undertake CEQA review of the proposed Plan Amendments, will provide notice to and consult with community and Project Area representatives, and will schedule a Public Hearing for the City Council's consideration of ordinances adopting the Plan Amendments.

Recommendations:

1. Adopt Redevelopment Agency Resolution approving the Preliminary Report for the proposed merger of Project Area No. 1 and the Great Mall Project Area, authorizing transmittal of the Report to the affected taxing entities, approving proposed Plan Amendments to the Redevelopment Plans for the Great Mall Project Area and Project Area No. 1, and authorizing transmittal of the proposed Plan Amendments to the affected taxing entities and to the Planning Commission.
2. Adopt City Council Resolution determining that a Project Area Committee is not required in conjunction with the proposed merger of Great Mall and Project Area No. 1 Redevelopment Project Areas.

RA8. Authorize the City Manager to Execute a Consulting Services Agreement with Noll & Tam Architects, Milpitas Senior Center, Project No. 8176 (Staff Contact: Greg Armendariz, 586-3317)

Background: The Milpitas Senior Center is included in the current five-year Capital Improvement Program. The new Senior Center will be provided through remodeling the existing Milpitas Community Library building, located at 40 North Milpitas Blvd. within the Civic Center complex.

Staff issued a Request for Proposals (RFP) and evaluated proposals submitted by professional architectural consultants, in conformance with the City's consultant selection process. The RFP

requested a complete package of services, including development of a project program, architectural design, landscape design, food service equipment design, and a range of supporting engineering disciplines including structural, civil, geotechnical, mechanical/plumbing, and electrical. The four highest-ranked proposals were invited to present their qualifications to an interview panel. Based upon the proposal evaluation, interviews, and qualifications screening process, staff recommends that Noll & Tam Architects provide the architectural and related engineering services required for this project.

Staff negotiated a scope and fee for these services not to exceed \$968,175. The fee includes programming process tasks, design fees, reimbursable expenses, a small allowance for additional services, and is considered reasonable for the scope of work. There are sufficient funds in the project budget to cover this expense. A draft copy of the proposed contract is included in the Council's agenda packet. Staff will provide a brief presentation on the selection process and the recommended consultant team.

Recommendation: Authorize the City Manager to execute a consulting services agreement with Noll & Tam Architects, in the amount of \$968,175, subject to approval as to form by the City Attorney.

***RA9. Adopt a Resolution for an Exclusive Negotiating Rights Agreement Between the Redevelopment Agency of the City of Milpitas and Piercey Automotive Group for the Development of a Multi-Story Class A Office Tower at the Intersection of Tasman Drive and I-880 (Staff Contact: Diana Whitecar, 586-3059)**

Background: The Redevelopment Agency acquired 3.34 acres at the intersection of Tasman Drive and I-880 in 2000 for the purpose of a Class A hotel development. The property was acquired from the Valley Transportation Authority for forty-eight dollars (\$48.00) per square foot or approximately \$7,000,000. The Agency entered into Exclusive Negotiations with Western International Realty for the development of a Marriott Renaissance, full service hotel on the property. Unfortunately, the economic downturn diminished the need for additional hotel rooms and the negotiations were not completed.

Since that time, the property has remained vacant and the City has not received very many inquiries for redevelopment of the site. Recently, representatives of Piercey Automotive Group have indicated their interest in developing the site as a Class A office tower that would house their Regional offices and the development and sales arm of the Toyota Racing Development Group. Piercey Automotive has offered to deposit the sum of \$2,000,000 with the Agency to enter into exclusive negotiations with the Agency for development of the site and to pay the Agency staff, legal and consultant fees and studies.

Agency members supported the negotiations, keeping as an ultimate result the reimbursement of the Agency's acquisition costs as a minimum return on investment. Staff proposes that during the exclusive negotiations period, a financial analysis be completed to determine if this goal is achievable. During this time, the City's Development Review team will meet with Piercey to establish requirements for design and permit review.

Terms of the Exclusive Negotiating Rights Agreement (ENRA) are:

- Developer will design and construct a multi story Class A office tower to create a landmark structure in Redevelopment Project Area No. 1.
- Tenants will include, but not be limited to, Piercey Toyota Regional offices and Toyota Racing Research, Sales and Development.
- Developer will use best efforts to lease to other revenue generating office users
- Term is for 180 days with an option for a 60-day extension.
- Developer makes a \$2,000,000 deposit into a Project Account that will be used for staff time associated with design and permit reviews, City Attorney's costs and for financial and economic analysis.

- Developer prepares submittals for design and permit review in conformance with a schedule developed in cooperation with the City's Development Review Team.
- City reviews submittals and returns comments to Developer in accordance with the agreed upon schedule.
- Both parties will agree before making deviations to the schedule.
- Agency will facilitate meetings with Valley Transportation Authority (VTA) regarding use of VTA owned property adjacent to the Agency owned property.

Recommendation: Adopt a Resolution authorizing the Agency Executive Director, or his designee, to execute an Exclusive Negotiating Rights Agreement with Piercey Automotive Group substantially in the form presented to the Agency Board.

***RA10. Adopt Two Resolutions Approving the Annual Investment Policy (Staff Contact: Emma Karlen, 586-3145)**

Background: The investment laws require all local agencies to develop an annual investment policy that must be considered by the legislative body of the local agency at a public meeting. The Annual Investment Policy (the Policy) for the City of Milpitas is submitted for your review and approval. Finance staff continues to monitor the changes to the Government Code in regards to investment parameters and allowable investments that may impact the City's investment policy. There are no proposed changes to the Annual Investment Policy this year.

The Policy is in compliance with the provisions of the California Government Code, Sections 53600 through 53659, the authority governing investments for municipal governments.

Recommendation: City Council and Milpitas Redevelopment Agency adopt the Resolutions approving the Annual Investment Policy.

***RA11. City of Milpitas Investment Portfolio Status Report for the Quarter Ended June 30, 2006 (Staff Contact: Emma Karlen, 586-3145)**

Background: In compliance with California Government Code and the City's Investment policy, the City of Milpitas Investment Report for the quarter ended June 30, 2006 is submitted for your review and acceptance.

The Portfolio Summary Report included in the Council's packet provides a summary of the City's investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity and the equivalent yields for each type of investment. The Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of June 30, 2006.

As of June 30, 2006, the principal cost and market value of the City's investment portfolio was \$245,079,241 and \$242,843,411 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If the investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal.

The City's effective rate of return for the period ended June 30, 2006 was 3.39%. The comparative benchmarks for the same period were 4.45% for LAIF (Local Agency Investment Fund) and 4.53% for the 12-month average yield of the 2-year Treasury Note. Excluding the long-term GNMA securities and Repurchase Investment Agreement, the weighted average maturity of the portfolio was 288 days.

The investment portfolio is in compliance with the City's investment policy. A combination of securities maturing, new revenues, and tax receipts will adequately cover the anticipated cash

flow needs for the next six months. Cash flow requirements are continually monitored and are considered paramount in the selection of maturity dates of securities.

Recommendation: City Council/Redevelopment Agency receive and file the investment report for the quarter ended June 30, 2006.

***RA12. Approve Authorization to Enter into Negotiations with Global Premier Development, Inc. for Affordable Housing Units (Staff Contact: Felix Reliford, 586-3071)**

Background: Global Premier Development, Inc., of Irvine, CA is proposing to develop a 101-unit rental apartment complex - Aspen Family Apartments. The project is located on So. Main Street, north of the Jack-In-The Box restaurant and south of Cedar Way. The developer proposed a 100% affordable housing development, with targeted income for households earning 30%-60% of the area median income. Based on the developer's proposal, the units would be available to extremely low, very low and low-income households. The project will address the City's need for affordable rental housing units for households that cannot afford to purchase for-sale units and for large family households in Milpitas. The proposed project will include a substantial number of three bedroom units.

Final details of the agreement (Owner Participation Agreement) will be presented to the City Council/Agency for approval at a later date. It is recommended that the Agency authorize staff to enter into negotiations with Global Premier Development, Inc. for the purpose of providing financial assistance from the Agency's 20% Affordable Housing Set-Aside funds. The Agency's authorization to enter into negotiations should not be considered implied approval for any of the forms of assistance requested by the developer. Any agreement negotiated is subject to Agency/Council review and approval.

The applicant Andrew Hanna, President of Global Premier Development, Inc., has received preliminary indications from the State of California Tax Credit Allocation Committee of high ranking and approval of their tax credit application for approximately \$24 million.

Included in the Agency's agenda packet are letters from the developer and the California Tax Credit Allocation Committee.

Recommendation: Approve authorization to enter into negotiations with Global Premier Development, Inc. to provide Agency Financing assistance from its 20% Affordable Housing Set-Aside Fund.

***RA13. Approve Amendment No. 1 to Agreement with Consolidated Engineering Laboratories, Midtown East Parking Garage, Project No. 8161 (Staff Contact: Steve Erickson, 586-3414)**

Background: This project is included in the current five-year Capital Improvement Program (CIP). The completed project will provide a parking garage structure for use by patrons of the Milpitas Library and other Midtown uses. The garage will be located adjacent to the new library and will include 289 parking spaces on four levels.

The City Council approved the list of pre-qualified bidders on June 6. Bids were opened on July 25. Construction of test piles will begin in August followed by beginning of the installation of the pile foundation system in September.

The garage structure includes a pile foundation system, with reinforced concrete pile-caps and tie beams; steel reinforced concrete slab-on-grade, and columns; poured-in-place, post-tensioned concrete beams and slabs; and metal railings. These structural elements require special inspection and testing by certified personnel to verify the contractor has constructed the work in conformance with the plans, specifications, and building codes.

An RFP process for special testing and inspection services for the current CIP projects was conducted and CEL was selected based upon the selection criteria. Council approved a consulting services agreement with CEL on April 18, 2006 for these services for an amount not to exceed \$200,000. Staff negotiated reduced unit pricing for the services associated with the Garage project, due to the economy of scale of the specific project design. Staff recommends amending the Consolidated Engineering Laboratories (CEL) contract to provide the required special inspection and testing services for the Midtown East Parking Garage. CEL has provided a proposal for the testing and inspection services reflecting the fee for these services not to exceed \$128,000, which is considered reasonable for the effort involved. The expenditure was anticipated in the project Cost Plan. There are sufficient funds in the project budget for the costs associated with this amendment.

Recommendation: Approve Amendment No. 1 to the Agreement with Consolidated Engineering Laboratories (CEL) for an amount not to exceed \$128,000 for special testing and inspection services for the Midtown East Parking Garage Project No. 8161.

***RA14. Approve Contract Change Order for the North Main Utilities Project-Weller Lane to Carlo Street, Underground Utility District No. 5, Project No. 8153 (Staff Contact: Steve Erickson, 586-3414)**

Background:

On February 7, 2006 the City Council/RDA awarded the construction contract for this project to D'arcy Harty Construction, Inc. This \$3,267,704 project provides for the installation of new and up-sized underground sewer, storm, water, power, gas, phone, and cable utilities to serve the new Milpitas library, east parking garage, and other Midtown development projects such as the DeVries Place senior housing and County health center. This project also provides for the undergrounding of the overhead utility wires and utility poles to support a clean and attractive streetscape.

Most of the underground construction has been completed and the contractor is coordinating with PG&E, AT&T, and Comcast to install the new utility wires within the newly installed underground conduits, as a prerequisite to removal of overhead wiring and utility poles.

During construction, the quantity of underground utility joint trench was increased as necessary and required by PG&E, to meet the goals of the project. Additional quantity of joint trench utilities were required to provide buried electrical and telecommunications facilities for planned and future development in the North Main Street area. The various bid unit prices are applied to the additional quantity of work. Staff recommends approval of a contract change order for the extension of joint trench installation and related work in an amount not-to-exceed \$84,287.50. There are sufficient funds in the project budget for this purpose.

Recommendation:

Approve a contract change order in the amount of \$84,287.50 to D'arcy Harty Construction, Inc. for the North Main Street Utilities, Project No. 8153.

RA15. Agency Adjournment

XVII. REPORTS OF OFFICERS, COMMISSIONS, AND COMMITTEES

City Council

*** 4. Approve Mayor's Recommendations for Appointments to City Commissions (Contact: Mayor Esteves, 586-3029)**

Background: Mayor Esteves recommends the following Milpitas residents be re-appointed and appointed to the Commissions noted below.

Arts Commission

Appoint Richard Tsuei to Alternate #1 with a term that expires in October 2006.

Appoint Asiya Hasan Asif to Alternate #2 with a term that expires in October 2007.

Parks, Recreation, and Cultural Resources Commission

Re-appoint Frances Krommenhock to a term that expires in June 2009.

Re-appoint Henry Ku to a term that expires in June 2009.

Citizens Emergency Preparedness Advisory Commission

Re-appoint Michael Berryhill to a term that expires in June 2009.

Re-appoint Tim Howard to a term that expires in June 2009.

Appoint William Nolan (current Alt. #1) to a vacant term that expires in June 2009.

Appoint Lori Bersabe to Alternate #1 with a term that expires June 2007.

Appoint Jaime Odena to Alternate #2 with a term that expires in June 2007.

Recommendation: Move to approve the Mayor's recommended Commission appointments.

Arts Commission

- * **5. Approve Eight Cultural Arts Support Program Applications for the 2006-07 Funding Cycle (Staff Contact: Renee Lorentzen, 586-3286)**

Background: The Cultural Arts Support Program (CASP) is a competitive grant program designed to increase and deepen participation in arts and cultural activities for the Milpitas community. CASP also encourages coalitions and collaborations between artists, art organizations and other sectors to infuse the entire community with art activities.

Eleven applicants submitted CASP grant applications by the May 19, 2006, deadline for 2006-07 funding cycle. Two applications, received from GENCO and the Calaveras Repertory Theatre were denied due to not following submittal guidelines. The Arts Commission CASP Subcommittee reviewed the applications at a June 4, 2006, meeting and recommended to the Arts Commission, eight applicants to receive grant specified In-Kind Services and monetary amounts, up to \$2,000 and one applicant for denial. The CASP Subcommittee presented its recommendations to the Arts Commission at their June 26, 2006, meeting.

Special recommendation for the Filipino American Association of Milpitas (Fil-Am) was made, in that the original recommendation of \$500.00 would be increased to \$1,500.00, should Fil-Am hold their festival at a non-City location to cover the cost of hall rental fees, as the Commission was concerned with the capacity of the Milpitas Community Center Auditorium and the event's audience size. Fil-Am was directed to contact staff with their decision on the event location, which they later did with the decision to hold the event at the Milpitas Community Center, utilizing the outdoor amphitheater's in the Civic Center Plaza as well, so their larger audience size can be distributed over a larger area.

The Arts Commission discussed the CASP Subcommittee's recommendations at length and recommended that the eight applicants be forwarded to the City Council for approval with the remaining balance to be used for Arts Day and the Milpitas Community Concert Band. Attached in the Council's agenda packet is the list of applicants, the recommended funding amounts and use of in-kind services, and Unapproved Minutes from the Arts Commission's June 26, 2006, meeting.

Recommendation: Approve the Arts Commission's recommendations for the Cultural Arts Support Program grants for FY 2006-07 in the amount of \$11,380, with the remaining balance to be applied to Arts Day, \$2000.00 and the Milpitas Community Band, \$1620.00, for a total of \$15,000.00.

CEPAC

6. **Request Direction from Council on Citizen Emergency Preparedness Advisory Commission Recommendation for a New Ordinance Requiring Automatic Gas Shut-Offs on Residences (Contacts: Councilmember Polanski, 586-3024; Patricia Joki, 586-3370; Keyvan Irannejad, 586-3244)**

Background: At the May 18 meeting of the Citizen Emergency Preparedness Advisory Commission (CEPAC), the Commission made a motion to request staff to develop an ordinance to require gas shut-off devices on residential developments. Staff is seeking direction from Council on this request from CEPAC.

Recommendation: Obtain direction from Council and proceed accordingly.

Finance and Library Subcommittees, Library Advisory Commission

7. **Receive Library Governance Study and Confirm the City's Current Membership in the Santa Clara County Library System and Joint Powers Authority (Staff Contact: Cindy Maxwell, 586-3287)**

Background: The City Council authorized the study of library governance alternatives for the Milpitas library in the fall of 2005. The study, prepared by Ruth Metz Associates, identifies and evaluates alternative library governing structures and assesses current library services.

Milpitas library services are currently provided by the Santa Clara County Library (SCCL) system. The system is governed by a Joint Powers Authority consisting of the County and nine member cities. The study indicates that Milpitas receives excellent library services through the SCCL based on customer satisfaction surveys and comparison with services provided in other libraries of similar characteristics.

The study initially identified five different governing structures, with three alternatives determined to be unrealistic. The remaining two options studied in depth were (1) the current Joint Powers Authority system for the Santa Clara County Library and (2) a municipally-owned and operated library.

The following strengths and weaknesses of the two options were identified as:

	Current Joint Powers Authority	Municipally-Owned and Operated Library
Strengths	<ul style="list-style-type: none">▪ Excellent library services▪ Economical services: estimated to cost Milpitas \$3.4 million annually	<ul style="list-style-type: none">▪ More local control over service provision and operating policies
Weaknesses	<ul style="list-style-type: none">▪ Less local control over service provision and operating policies	<ul style="list-style-type: none">▪ Higher cost: \$4.9 million annually + more than \$9.3 million in start-up costs▪ Unproven library service quality

The study was reviewed by the City Council's Finance and Library Subcommittees and the Library Advisory Commission. The Library Advisory Commission recommended that the City remain in the SCCL and asked that the City Council consider whether additional services are needed that can be funded with revenue from the Transient Occupancy Tax.

Recommendation: Confirm that the City will remain in the existing Santa Clara County Library system governed by a Joint Powers Authority.

XVIII. NEW BUSINESS

- * 8. **Request for Waiver of Fees for South Bay School of Music Arts Rental of City's Mobile Stage at Chamber of Commerce's "Celebrate Milpitas" Festival (Staff Contact: Kathleen Yurchak, 586-3209)**

Background: On June 20, 2006, the City Council approved the Entertainment Event Permit for the Chamber's annual street festival in Milpitas, this year named "Celebrate Milpitas." In late July, the City's Recreation Staff received a request for use of the Mobile Stage by a music group at the event. The fees for the stage include the \$350 rental fee per day (\$700) and \$1000 per day damage deposit (\$2000). Should Council approve South Bay Kids/Joe Santoro's request, towing fees and staff costs would be paid by Recreation Services operating budget from the Special Events function.

South Bay Kids/South Bay School of Music Arts thus requests the City Council to waive total costs of \$2,700. The City Council has traditionally waived these fees for the past several years.

Recommendation: Waive fees as requested by the South Bay School of Music Arts for use of the Mobile Stage at Chamber of Commerce "Celebrate Milpitas" festival on August 19-20, 2006.

- * 9. **Authorize the Purchasing Agent to Dispose of Two Surplus Vehicles (Staff Contact: Chris Schroeder, 586-3161)**

Background: The City has two (2) vehicles that have reached the end of their useful lives. The cost to repair these vehicles exceeds their value and they have been removed from service. Nation Wide Auction estimates the value of these units at auction to be as follows:

1987 Ford L8000 Sewer Truck license # 421728, estimated value: \$10,000.

1993 Ford F-700 Flatbed Altec truck license # 379024, estimated value: \$12,000.

Staff requests authorization to dispose of the sewer truck at auction and the Altec Flatbed as a trade in for the new Altec truck currently on order for Public Works, pursuant to section I-2-8.03 of the Municipal Code "Disposal of More Than \$1,000".

Recommendation: Approve the request to dispose of the vehicles as specified.

XIX. ORDINANCES

10. **Waive First Reading Beyond Title and Introduce Ordinance No. 262.3 Regarding Open Government (Contacts: Vice Mayor Gomez, 586-3031, Councilmember Livengood, 586-3027)**

Background: The Council's Open Government Subcommittee has discussed the lobbyist registration section of the open government ordinance (Milpitas Municipal Code I-310- 3.10), as adopted by the City Council on April 5, 2005. At the June 7 meeting, Councilmembers asked the City Attorney for suggested language to clarify the definition of the term "lobbyist" in order to exclude employees of local governments. On July 12, the City Attorney presented that language.

Attached is the draft ordinance prepared by the City Attorney with additional definition of lobbyist. This ordinance is prepared and presented in advance of the implementation of the lobbyist registration segment of the Open Government ordinance, also currently under discussion by the subcommittee.

Recommendation:

1. Waive First Reading Beyond the Title of Ordinance No. 262.3
2. Introduce Ordinance No. 262.3. amending the definition of lobbyist.

11. **Waive First Reading Beyond Title and Introduce Ordinance No. 101.19 and Resolution of Intention to Approve an Amendment to the Contract Between the Board of Administration**

California Public Employees' Retirement System and the City Council of the City of Milpitas (Staff Contact: Carmen Valdez, 586-3086)

Background: As a result of contract negotiations between the City and the Milpitas Police Officers' Association finalizing the Memorandum of Understanding for the period of July 1, 2005 - December 31, 2007, both parties agreed that the City would amend its contract with the Public Employees Retirement System (PERS) to provide Section 21548 (Pre-Retirement Optional Settlement 2 Death Benefit) and Section 21574 (Fourth Level of 1959 Survivor Benefits) for local police members only. PERS contract amendment procedures require an adoption of a Resolution of Intention to amend the contract and adoption of an amending Ordinance. PERS further recommends that the City disclose the following costs:

Section 21548:

- 1) Change in Present Value of Benefits \$151,245
- 2) Change in the Accrual Liability \$100,775
- 3) Change in the total Employer Rate 0.079%

Section 21574:

- 1) First Year Employer Normal Cost \$5447
- 2) 5-Year Amortization of Unfunded Liability/Excess
Asset payment (fixed for 5 years) \$(15,991)
- 3) First Year Total Employer Cost \$0

Recommendation:

- 1. Adopt the Resolution of Intention.
- 2. Waive the first reading beyond the title of Ordinance 101.19.
- 3. Introduce Ordinance No. 101.19.

- * **12. Waive Second Reading and Adopt Ordinance No. 38.768 for Zone Change No. ZC2004-1 for a Five (5) Lot Subdivision from Agriculture (A) to Single-Family Residential (R1-6), Located at 2015 Calaveras Road, APN 088-16-041 (Staff Contact: Kim Duncan, 586-3283)**

Background: On May 2, 2006, the City Council approved Zone Change (No. ZC2004-1) from Agricultural (A) to Single-Family Residential (R1-6) in conjunction with a five (5)-lot subdivision (MA2004-3-Calaveras Country Estates) of an approximately .95 gross acre parcel for the purpose of creating new single-family lots. On June 20, 2006, Ordinance 38.768 was introduced for the approved zone change and staff is now recommending to waive the second reading and adopt Ordinance 38.768.

Recommendation: Waive the second reading and adopt Ordinance No. 38.768 for Zone Change No. ZC2004-1 for the Calaveras Country Estates Subdivision.

XX. RESOLUTIONS

- * **13. Adopt Resolution Regarding Policy for the Provision of Wastewater Collection, Treatment and Disposal Services to Residential Units with Affordable Housing Components (Staff Contact: Steve Mattas, 586-3040 and Greg Armendariz, 586-3317)**

Background: The attached resolution and policy is intended to bring the City into compliance with the non-discrimination mandates of Government Code section 65589.7. This section requires that during times of limited capacity or ability to provide service all public agencies that provide water and sewer services give priority to those proposed developments that have housing units affordable to lower income households. In times of excess water capacity, the City shall review and provide or permit the provision of public water and sewer service to residential housing developments on an income neutral basis. As part of this mandate, entities like the City of Milpitas who provide sewer and water services must adopt written policies and procedures, effective July 1, 2006, with objective standards for compliance with this section.

At least once every five years after the adoption of this policy, City staff must also prepare a report for acceptance by the City Council identifying: (a) available collection, treatment and disposal capacity; (b) the anticipated demand for wastewater utility service by planned housing units affordable to lower income households; (c) any public or private action steps necessary to accommodate such demand if adequate capacity is unavailable; and (d) any changes to these policies or procedures necessary for implementing this service requirement. Government Code § 65589.7(b).

There will be some additional cost to the City in terms of staff time for the preparation of the periodic report mentioned above.

Recommendation: Approve the Resolution adopting a policy regarding the provision of water and wastewater collection, treatment and disposal services to residential units with affordable housing components.

*** 14. Adopt Resolution Regarding June 6, 2006 Final Election Results (Staff Contact: Mary Lavelle, 586-3001)**

Background: On Tuesday, June 6, 2006, voters in the City of Milpitas went to the polls to vote on local ballot Measure I, the charter city advisory vote. The special municipal election was held consolidated with the state gubernatorial primary election held on that date.

The Registrar of Voters of Santa Clara County canvassed the votes and presented the final election results. A majority of the votes cast was in opposition to the ballot measure presented. Since this was an advisory vote only, the City Attorney noted in the Impartial Analysis that the results of this election do not change existing law.

Also, final Election costs for Measure I, per the Santa Clara County Registrar, were \$39,732.

Recommendation: Adopt the Resolution confirming the canvass of returns and declaring the results of the Special Municipal Election held Tuesday, June 6, 2006 (Measure I).

*** 15. Adopt Resolution Certifying and Annexing Tract 9690 to Community Facilities District No. 2005-1, Apton Properties, Project 3144 (Staff Contact: Mehdi Khaila, 586-3328)**

Background: Apton Properties, LLC (the owner of Tract 9690) is required to annex the subject property into the Community Facilities District 2005-1 (CFD 2005-1) as a condition of the tentative map approved by the Council on August 2, 2005. Resolution No.7521 adopted by City Council on May 17, 2005 forming the CFD 2005-1, authorizes the City to annex properties to CFD 2005-1, which will be assessed only for eligible public services, without further public hearing or formal election upon receipt of written consent from the owners.

Apton Properties, LLC has given consent and approval that this property be annexed to CFD 2005-1. Apton Properties, LLC has also agreed that such consent and approval constitutes election to annex to CFD 2005-1 and approval of the authorization for the levy of the special tax on the subject properties.

Recommendation: Adopt resolution certifying and annexing properties to Community Facilities District No. 2005-1.

*** 16. Adopt Resolution Requesting the Allocation of Grant Funding from the MTC – TLC Capital Grant Program for the Midtown Transportation and Streetscape Improvements Phase I for the North Main Street from Weller Lane to Carlo Street project (Staff Contact: Jaime Rodriguez, 586-3335)**

Background: Staff has submitted a grant proposal to the Metropolitan Transportation Commission (MTC) in response to their call-for-projects for their Transportation for Livable Communities (TLC) Capital Grant program. The proposal seeks funding for the Midtown Transportation & Streetscape Improvements Phase I project on North Main Street between Weller Lane and Carlo Street. The project includes roadway infrastructure and streetscape enhancements geared towards promoting pedestrian/bicycle and transit access to new community facilities including the new public library, county medical facility, and private residential development. The City is requesting \$2,956,000 with a City local match of \$1,000,000. The City's local match is already funded in the Project. The MTC grant application requires a resolution from the City Council, requesting the allocation grant funding.

The City also applied for grant funding from the Valley Transportation Authority's (VTA) – Community Design for Transportation (CDT) Capital Grant program for this project.

Recommendation: Approve Resolution Requesting the Allocation of grant funding from the MTC - TLC Capital Grant Program for the Midtown Transportation & Streetscape Improvements Phase I: N Main Street between Weller Lane and Carlo Street project.

*** 17. Adopt Resolution Approving Disadvantaged Business Enterprise (DBE) Race-Neutral Implementation Agreement for Federally Funded City Transportation Projects (Staff Contact: Mark Rogge, 586-3403)**

Background: Title 49 of the Code of Federal Regulations (CFR) requires a recipient of Department of Transportation (DOT) funds to have a DBE program and establish an annual overall percentage goal for disadvantaged businesses in applicable City Contracts. The purpose of the DBE program is to afford disadvantaged business enterprises as defined in Title 49 CFR, the maximum opportunity to participate in projects financed with DOT funds, to ensure nondiscrimination on award of DOT contracts. The DBE program also creates a level playing field on which disadvantaged businesses can compete fairly for DOT-assisted contracts. This program required use of race-conscious measures to achieve the set goal. This means the contractor must meet the set goal, or if not, show a good faith effort made to achieve the goal.

A recent Ninth Circuit Court of Appeals decision involving the Washington State Department of Transportation (WSDOT) held that WSDOT lacked sufficient evidence to support the use of race-conscious measures on federal-aid contracts to achieve the purpose of the program. On May 1, 2006, Caltrans implemented a race-neutral DBE program. The program requires race neutral measures to achieve any goal set for the program. The contractor in this case is encouraged but not required to meet the goal or show good faith effort.

Local agencies will no longer have their own separate DBE programs. Instead, local agencies must complete a "Disadvantaged Business Enterprise Race-Neutral Implementation Agreement" which is included in the recommended resolution.

Recommendation: Adopt resolution approving Disadvantaged Business Enterprise Race-Neutral Implementation Agreement.

*** 18. Adopt Resolution Granting Final Acceptance Water System Air Relief Valve Modifications, Phase I, Project No. 7086 (Staff Contact: Andrew Brozyna, 586- 3315)**

Background: This project, which was initially accepted on July 7, 2005, has passed the one-year warranty period. A satisfactory final inspection has been made of the public improvements that include Air Relief Valves and enclosures. Therefore, the Council may grant final acceptance and the contractor's bond may be released.

Recommendation: Adopt resolution granting final acceptance and release of the bond, for Water System Air Relief Valve Modifications, Phase I.

19. Authorize City Manager to Execute Contract for Disaster Preparedness Services (Staff Contact: Clare Frank, 586-2811)

Background: The Milpitas Fire Department is charged with managing the City's disaster preparedness program and its various functions. The Battalion Chief, who managed the program, recently retired and the Battalion Chief slated to handle the functions as collateral duties will be on leave for 2-3 months. To ensure no appreciable reduction in the most important disaster preparedness functions, a dedicated program manager is needed to handle various priority matters until the vacancy can be filled. The functions and estimated hours suitable for consultant services, the proposed consultant who is qualified and available to provide the consultant services, and the proposed contract rates are set forth in the attached report.

Recommendation: Authorize the City Manager to execute a consultant contract for disaster preparedness services not to exceed \$39,497, subject to approval as to form by the City Attorney.

*** 20. Award the Bid for the Public Access Studio to Ranis Construction, Inc. (Staff Contact: Chris Schroeder, 586-3161)**

Background: On May 19, 2006, staff went out for bids for a Public Access Studio. The bid was advertised in the Milpitas Post, mailed to eleven vendors on the City's vendor data base, and posted on the City's website. Only one vendor responded and that bid is: Ranis Construction & Electric, Inc. for \$45,300.00.

There are sufficient funds available in Capital Improvement Project 3397 "PEG Access Support" for this work.

Recommendation: Award the bid and authorize the City Manager to execute a contract with Ranis Construction & Electric, Inc. to construct a Public Access Studio for the not to exceed amount of \$45,300.00.

*** 21. Approve Budget Appropriation for Abel Street Midtown Improvements, Project No. 8157 (Staff Contact: Greg Armendariz, 586-3317)**

Background: This project is included in the current five-year Capital Improvement Program (CIP). The completed project will provide for the design and construction of street improvements on Abel Street from Weller Lane to Great Mall Parkway to create a landscaped boulevard corridor on Abel Street.

A portion of the project consists of bank erosion repairs to Penitencia Creek in order to install the new sidewalk and joint trench improvements. To do so requires approval and permitting from several government agencies that have jurisdiction.

Staff requests an additional funding increase to provide unforeseen environmental services and permitting required for this portion of the project. These services are needed to obtain approval and EIR permits from various governmental agencies. Costs for these services are eligible for reimbursement from the County/City/KB Infrastructure fund.

Recommendation: Approve budget appropriation in the amount of \$25,000.00 from County/City/ KB Infrastructure fund into Capital Improvement Project No. 8157, Abel Street Midtown Improvements.

*** 22. Approve Budget Appropriation for the So. Park Victoria Drive Pavement Rehabilitation, Project No. 4225 (Staff Contact: Doug De Vries, 586-3313)**

Background: On April 18, 2006, the City Council awarded this project to O'Grady Paving, Inc. in the amount of \$1,369,596. This project provides new asphalt pavement for South Park Victoria Drive (between Calaveras Boulevard and Yosemite Drive) and on Calaveras Boulevard (between Park Victoria Drive and I-680 on/off ramps east.) The work will include rubberized asphalt concrete overlay, localized full depth asphalt concrete repairs, cold planning, replacement of traffic detector loops, and installation of ADA compliant sidewalk ramps.

Project is under construction with scheduled completion by September 2006. A budget appropriation of \$140,000 from the Street Fund is needed for construction contingency and staff time.

Recommendation: Approve a budget appropriation for \$140,000 from the Street Fund into Project No. 4225, South Park Victoria Drive Pavement Rehabilitation.

*** 23. Authorize Payment to Surety Company for Hall Park Walkway Improvements, Project No. 5058 (Staff Contact: Greg Armendariz, 586-3317)**

Background: The walkway renovation improvements at Hall Park (between the two bridges near Abbott Avenue) have been satisfactorily completed and initially accepted by City Council on February 1, 2005. However, the final payment of \$187,525 has been withheld to the general contractor as required by state law (due to the stop notice litigations by the suppliers and subcontractors). The release of the final payment has been resolved with bonds (from an additional surety company) for the releases of the stop notices, which the Office of City Attorney has determined to be appropriate. Therefore, final payment can now be made, minus a deduction for City administrative costs related to stop notice litigations in the amount of \$5,000.

Recommendation: Authorize disbursement of a check in the amount of \$182,525 to Financial Pacific Insurance Co (the original surety company) as final payment for the project.

*** 24. Authorize the City Engineer to Execute a Contract Change Order for the 2006 Slurry Seal, Project No. 4229 and Main/Montague Traffic Signal Modification, Project No. 4231 (Staff Contact: Doug De Vries, 586-3313)**

Background: The City Council awarded this project to American Asphalt Repair and Resurfacing Co., Inc. on June 20, 2006, and construction is underway. The completed project will provide slurry seal on Kizer Street, Rivera Street, Helfin Street, Tice Drive, Park View Drive, Park Heights Drive, Park Grove Drive, Park Hill Drive, Dolores Drive, and Mattos Drive, and the anticipated completion date is September 22, 2006.

Staff recommends that additional work to provide slurry seal on Main Street north of Montague Expressway be included in the project. Staff has negotiated a fee not to exceed \$47,000 with the Contractor for this additional work, and the approval of a contract change order is recommended. The cost for this change order work is to be funded by the Main/Montague Traffic Signal Modification Project, Project No. 4231. Project 4231 Main/Montague Traffic Signal Modification will also be included in the contract with American Asphalt through this change order.

Recommendation: Authorize the City Engineer to execute the Contract Change Order for American Asphalt Repair and Resurfacing Co., Inc. in the amount of \$47,000.

*** 25. Award Construction Contract: Sewer Deficiency and Structural Correction Program – Open Cut, Project No. 6073 (Staff Contact: Greg Armendariz, 586-3317)**

Background: The program provides for the replacement of high maintenance sewer mains due to structural deficiencies, differential settlement, and damaged sewer lines as confirmed by video inspection. This phase will provide for sewer line replacements at 1665 Cortez Street to Cortez Street at Coelho Street, Dixon Road at Conway Street to the Hetch Hetchy right of way, Spence

Avenue at Whittier Street to Spence Avenue at Casper Street, Norwich Avenue at Barker Street to Norwich Avenue at Casper Street, Barker Street at Norwich Avenue to 212 Barker Street, 380 Monmouth Drive to Monmouth Drive at Edsel Drive, 1425 Saturn Court to end of Saturn Court, and Carnegie Drive at Edsel Drive to Carnegie Drive at Freeland Drive. This project will also adjust manhole covers so they are level with the adjacent pavement on Roswell Drive from Canton Drive to Edsel Drive. The Engineer's Estimate was \$900,000.

City Council authorized the rejection of all bids and re-advertisement for bid proposals on June 20, 2006. The project was re-advertised and sealed bid proposals were opened on July 13, 2006. The bid proposals ranged from \$624,910 to \$729,359, and the lowest responsible bidder has been determined to be Pacific Underground. Sufficient funds are available in the project budget to award the project. Pacific Undergrounding has performed satisfactorily on the Main Street Utility Project.

Recommendation: Award the construction contract to Pacific Undergrounding in the amount of \$624,910.

*** 26. Approve Budget Transfer and Purchase Orders for General Legal, Public Works Litigation, and Personnel Services Expenses Provided by Meyers Nave for FY 2006-07 (Staff Contact: Steven Mattas, 586-3040)**

Background: As part of the approved budget for fiscal year 2006-2007, the City Council appropriated funding for general city attorney services and personnel arbitration, grievance and PERB proceedings and also appropriated funding in the contingent reserve account for litigation expenses. The purpose of this staff report is to request that the City Council authorize purchase orders for Fiscal Year 2006-2007 to Meyers Nave for the legal services referenced above. Specifically, the requested purchase orders include: (1) a purchase order in the amount of \$683,000 for general City Attorney and personnel legal services for FY 2006-07 from the previously approved City Attorney supplies/services budget and a purchase order in the amount of \$105,000 for arbitration/grievance/PERB proceedings for fiscal year 2006-2007 funded from the City Attorney supplies/services budget. In addition, we are requesting that the City Council authorize a transfer of \$400,000 from the contingent reserve account into the City Attorney's supplies/services budget for professional services and also authorize a purchase order in the amount of \$400,000 to Meyers Nave for public works litigation expenses with funding from the City Attorney supplies and services budget.

Recommendation: Authorize a budget transfer of \$400,000 from the contingent reserve account to the City Attorney's Department Supplies and Services budget for professional services and issuance of purchase orders to Meyers Nave in the amounts of (1) \$683,000 for general personnel and legal services for fiscal year 2006-2007, (2) \$400,000 for public works litigation expenses and (3) \$105,000 for personnel arbitration, grievance and PERB proceedings.

*** 27. Approve Renewal of Annual Software Support and Maintenance Fees with Cayenta for the Financial System through June 30, 2007 (Staff Contact: Terry Medina, 586-2703)**

Background: In FY 1997-98, the City of Milpitas implemented a new Finance system that supported the financial tracking and reporting needs of the City. The system includes licensed software and maintenance support provided by Cayenta, the vendor of the financial application. Maintenance and support of the system are provided through the renewal of the annual fee.

The annual software support and maintenance fee also entitles the City to any system enhancements that Cayenta develops during the year at no charge to the City. The annual maintenance term with Cayenta expired on June 30, 2006 and requires renewal to ensure continuation of the software license and software support of the Finance System. Funding for the agreement has already been approved in the Information Services operational budget for the majority of the costs with the exception of the Utility payment, which is paid from the Water and Sewer funds. No additional funding is required for this agreement.

Approval of the annual software support and maintenance fee with Cayenta will provide continued support of the Finance System through June 30, 2007.

Recommendation: Authorize the City Manager to approve the payment of the annual software support and maintenance fee to Cayenta.

- * 28. **Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals for Main/Montague Traffic Signal Modification, Project No. 4231 (Staff Contact: Doug De Vries, 586-3313)**

Background: Plans and specifications for the subject project have been completed in accordance with the approved five-year Capital Improvement Program (CIP). The project consists of installing conduits, conductors, pavement delineation, traffic loop detectors, and pull boxes. The Engineer's estimate for the work is \$35,000. It is anticipated that a budget appropriation will be required to award this project for construction. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

Recommendation:

1. Approve plans and specifications.
2. Authorize advertising project for bid proposals.

XXII. CLAIMS AND DEMANDS

- * 29. **Approve Payment Requests to Two Vendors (Staff Contact: Chris Schroeder, 586-3161)**

Background: In accordance with Ordinance No. 23.10 of the Municipal Code, Purchasing has prepared the following list of purchasing requests over \$20,000.00 for approval.

1. \$21,750.00 to Acco Engineered Systems to remove and replace a failed compressor in the Energy Labs AH-1 HVAC system at City Hall. The work was performed as an emergency under section I-2-3.10 of the Municipal Code "Emergency Authority of Purchasing Agent". (Funds are available from the Building Maintenance Division operating budget for this repair).
2. \$51,407.35 to Peterson Power Systems, Inc. to repair the failed engine and radiator at Gibraltar Pump Station. Gibraltar Pump Station is located off South Milpitas Boulevard. The site consists of two five million gallon reservoirs and a pump station. The station is operated to provide peak water demand for fire flow in the event of an emergency. Engine #3 including the radiator has failed and is in need of emergency repairs to bring it back on line. Staff has received a quote from Peterson Power Systems, the only authorized Caterpillar dealer in this region, to overhaul the engine and bring it back on line for \$51,407.35. This repair was performed as an emergency under section I-2-3.10 of the Municipal Code "Emergency Authority of Purchasing Agent". (There are sufficient funds in the Gibraltar Reservoir & Pump Station Capital Improvement Project, No. 7101 for these repairs.)

Recommendation: Approve the payment request.

XXIII. ADJOURNMENT

NEXT REGULARLY SCHEDULED COUNCIL MEETING

TUESDAY, AUGUST 15, 2006, AT 7:00 P.M.